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**IN THE  
COURT OF APPEALS OF INDIANA**

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HERBERT STEPHERSON, JR.,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 64A03-0607-CR-338

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APPEAL FROM THE PORTER SUPERIOR COURT  
The Honorable Roger V. Bradford, Judge  
Cause Nos. 64D01-0304-FC-2936 and 64D01-0508-FB-6925

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**May 14, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Herbert Stepherson, Jr.,<sup>1</sup> appeals his sentence imposed following a plea agreement in which he pled guilty to class D felony theft and admitted that he violated probation. We affirm.

## **Issue**

Stepherson raises one issue, which we restate as whether his sentence is inappropriate in light of the nature of the offense and his character.

## **Facts and Procedural History**

In January 2003, Stepherson was the secretary/treasurer for the International Longshoremen's Association Local 2038. Appellant's App. at 4. Stepherson deposited four checks totaling \$7800, forged in the name of Valerie Thill, into the union's "Beta Growth" account and then withdrew \$5150. *Id.*

On April 8, 2003, the State charged Stepherson with class C felony forgery and class D felony theft under cause number 64D01-0304-FC-2936. On February 28, 2005, Stepherson entered into a written plea agreement with the State, in which he pled guilty to forgery and the State dismissed the theft charge. *Id.* at 38. Pursuant to the plea agreement, the parties would argue sentencing with the restriction that any incarceration would be capped at two years. *Id.* The trial court sentenced Stepherson to four years in the Department of Correction with all but ninety-one days suspended. *Id.* at 46. Stepherson

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<sup>1</sup> According to the presentence investigation report, appellant's name on the charging information was given as "Herbert E. Stepherson, Sr." but his true name is "Herbert Elmer Stepherson, Jr." Appellant's App. at 134. Herbert E. Stepherson, III, is appellant's son. *Id.* at 141.

received credit for one day served prior to sentencing, and the remaining ninety days were to be served on home detention. *Id.* The trial court placed Stepherson on formal probation for the suspended portion of his sentence, subject to the normal and usual conditions of probation. *Id.*

On July 29, 2005, Stepherson had been released from home detention and was living in an apartment that shared a common living area with Charles Gajewski. *Id.* at 51-2. Based on a prior arrangement with Zachary Duis, Stepherson left the door to Gajewski's residence unlocked so that Duis could enter to steal cash and other items. *Id.* Duis stole \$2800 in U.S. currency and two wristwatches. *Id.* Stepherson received \$1000 from the theft, which he used to bond his son out of jail. *Id.*

On August 17, 2005, the State charged Stepherson with class B felony aiding in burglary under cause number 64D01-0508-FB-6925. Based on this charge, a petition to revoke probation was filed in cause number FC-2936. On May 22, 2006, Stepherson entered into a plea agreement disposing of both causes: he pled guilty to class D felony aiding in theft in cause number FB-6925 and admitted that he violated probation in cause number FC-2936. *Id.* at 91. The plea agreement permitted the parties to argue sentencing without restriction. *Id.*

At the change of plea hearing in cause number FB-6925, the trial court advised Stepherson that he could be sentenced from six months to three years for class D felony aiding in theft. Change of Plea Tr. at 7. The trial court also informed him that all or part of his previously suspended sentence could be imposed for his probation violation and that "it is required by statute that any sentence for the aiding in a theft must run consecutive to any

sentence imposed on the probation revocation.” *Id.* at 8.<sup>2</sup>

On June 26, 2006, the trial court sentenced Stepherson to two years’ imprisonment for class D felony aiding in theft. For the probation revocation, the trial court ordered him to serve the three years that had been previously suspended, consecutive to the sentence for theft. Stepherson appeals.

### **Discussion and Decision**

Stepherson asserts that his sentence is inappropriate. Article 7, Section 6 of the Indiana Constitution authorizes this Court to review and revise criminal defendants’ sentences pursuant to the rules of our supreme court. Indiana Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Our review under Appellate Rule 7(B) is extremely deferential to the trial court. *Pennington v. State*, 821 N.E.2d 899, 903 (Ind. Ct. App. 2005).

In arguing that his sentence is inappropriate, Stepherson focuses entirely on his character, completely ignoring the nature of the offenses.<sup>3</sup> He argues that he had led a law-abiding life for eighteen years prior to committing the offense in cause number FC-2936, but

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<sup>2</sup> See Ind. Code § 35-50-1-2(d) (requiring consecutive terms where, after being arrested for one crime, a person commits another crime before he or she is discharged from probation, parole, or a term of imprisonment imposed for the first crime).

<sup>3</sup> Given the paucity of Stepherson’s argument, it would not be unreasonable to find that it is waived. See Ind. Appellate Rule 46(A)(8)(a) (requiring that argument be supported by coherent reasoning); *Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) (observing that failure to present a cogent argument constitutes waiver of issue for appellate review), *trans. denied*. We address Stepherson’s claim due to our preference to resolve cases on their merits.

we cannot ignore that he has three prior misdemeanor convictions (one for theft and two for bad checks) and two burglary convictions that are similar in nature to his most recent offenses. Appellant's App. at 133. All are crimes of dishonesty that suggest an opportunistic and deceitful character. His references to his on-the-job injury, drug addiction, and job loss are unfortunate, but they do not excuse his behavior. Essentially, his argument can be boiled down to the fact that he completed the Porter County Jail forty-five-hour chemical dependency and addictions program. His completion of the Porter County jail addictions program is a laudable first step, but whether this accomplishment accurately reflects his character is unclear given that he had previously been ordered to complete drug counseling and had not done so.

Regarding the nature of the offenses, we note that Stepherson had been recently released from home detention and was on probation when he took advantage of his living arrangements to assist the theft from his neighbor. He also took advantage of his position as secretary/treasurer for the local longshoremen's union, thereby betraying the trust that had been placed in him. In sum, the five-year aggregate sentence is not inappropriate.

Affirmed.

SULLIVAN, J., and SHARPNACK, J., concur